IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 342 OF 2006

Mr. Nasir Gulab Momin .....Petitioner.

V/s

Master Aman Nasir Momin & anr. .....Respondent.

Mr. A.N. Mulla for the peititioner.
Mr. Y.S. Shinde, APP for the State.

CORAM: V.M. KANADE, J.
DATE : 1st August, 2006

P.C.:

1. Heard the learned Counsel for the petitioner.

2. By this Petition, petitioner is challenging the order passed by the Family Court No.2, Pune, whereby the Court has directed the petitioner to pay maintenance @ Rs 3000/- per month to his minor son from the date of the petition i.e. from 01/07/2004.

3. The learned Counsel appearing on behalf of the Petitioner assailed the said order on two counts. He

submitted that the order was passed ex parte and the notice was not served on the petitioner. He submitted that the wrong address was mentioned in the cause title of the application by the wife of the petitioner. It is submitted that, therefore, the said ex parte order was liable to be set aside. It is next contended that the Family Court, Pune did not have jurisdiction to try and decide the application of divorced Muslim Wife in view of the provisions of section 3 of the Muslim Women (Protection of Rights on Divorce) Act, 1986. He submitted that so far as the maintenance of the son is concerned, the Magistrate has jurisdiction to decide such application.

4. Perusal of the petition discloses that after ex parte order was passed, the application was preferred by the petitioner for canceling or altering the order passed by the Family court. When a query was made regarding the result of the said application, the learned Counsel appearing for the petitioner fairly conceded that the said application is still pending in the Family Court. Since the said application is pending in the Family Court, all contentions which are raised

in this petition can be raised by the petitioner in the said application. The present petition, in my view, has been filed prematurely and, therefore, it is not maintainable particularly because the application for setting aside the ex parte order is still pending before the Family Court. All contentions which are raised by the petitioner in this petition can be agitated by him in the Family Court, Pune. This Writ Petition, therefore, does not survive and hence the same is dismissed. The Application P.E. No. 347 of 2005 filed by the petitioner may be decided as expeditiously as possible and, in any event, within a period of three months.

(V.M. KANADE, J.)